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REMARKS

Claims 1-4, and 6-13 have been amended herein in this Amendment A. Further, claims 1-3, 6, and 9-13 have been amended to more particularly claim the invention and to require the Yucca species extract of the invention to be a *Yucca schidigera* solution, specifically, Yucca 70. Support for these amendments can be found in original dependent claims 3 and 12-15 and the instant specification on page 4, lines 24-29. Claim 4 has been amended to require the composition to comprise an additional component selected from the group consisting of alcohols, water, emollients, surfactants, preservatives, chelating agents, pH buffers, fragrances, urease inhibiting actives, and combinations thereof. Support for this amendment can be found in the instant specification on page 6, lines 1-7. Claims 7-8 have been amended to more particularly claim the invention. Claims 14-15 have been cancelled. After entry of this Amendment A, claims 1-13 will be pending in this case. No new matter has been added by these amendments.

As discussed more thoroughly below, Applicants assert that the Tyrrell et al. reference (U.S. No. 2002/0136755) cited by the Office is not prior art under 35 U.S.C. 103(a) against the present invention as asserted by the Office. In support of this assertion, Applicants are enclosing herewith the Notice of Recordation and Assignment for the Tyrrell et al. reference indicating the assignment to Kimberly-Clark, along with the Notice of Recordation and Assignment for the instant application indicating the assignment to Kimberly-Clark. Applicants respectfully request reconsideration and allowance of all pending claims.

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**1. Objection of Claims 1-15**

In response to the Examiner's objection to claims 1-15 set forth in paragraph 1 of the Office action, claims 1-3, 6, and 9-13 have been amended to replace "Yucca sp." with "Yucca 70". As such, the objection to the use of "Yucca sp." should be withdrawn. No new matter has been added to the application by this amendment.

**2. Rejection of Claims 6 and 8-11 Under 35 U.S.C. §102(b)**

Reconsideration is requested of the rejection of claims 6 and 8-11 under 35 U.S.C. §102(b) as being anticipated by Znaiden et al. (6,159,487).

Claim 6, as herein amended, is directed to a wet wipe for controlling the production of ammonia by urine. The wet wipe comprises a flexible sheet material and a composition held by the sheet. The composition comprises Yucca 70.

Znaiden et al. disclose a cosmetic product for soothing, reducing puffiness, and lessening dark circles around the eyes. The cosmetic product includes a sealable container; at least one absorbent pad, made from natural or synthetic fibers, with printing on at least one major surface thereof, the pad being enclosed within the container; and a fluid cosmetic composition within the container and at least partially absorbed onto the absorbent pad. The fluid cosmetic composition contains primarily water; but can also contain from 0.00001 to 10% of a natural botanical ingredient, including plant purees, extracts, and vitamins. A laundry list of about 125 sources from which extracts and other derivatives can be obtained is disclosed. One of the generic sources disclosed is Yucca.

Significantly, Znaiden et al. fail to disclose a wet wipe

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for controlling the production of ammonia by urine comprising a composition including the specific Yucca source of Yucca 70. This is a requirement of claim 6, and is a significant aspect of Applicants' invention. Although the reference does disclose the Yucca species generally in a long listing of about 125 sources, there is no disclosure of the Yucca species, *Yucca schidigera*, and specifically, Yucca 70, required by claim 6 as amended herein. Additionally, and importantly, none of the six or so working Examples of Znaiden et al. disclose the use of any Yucca species extract for soothing, reducing puffiness, and lessening dark circles around the eyes, or otherwise.

M.P.E.P. §2131 states that a claim is anticipated under 35 U.S.C. §102 only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

As indicated above, amended claim 6 requires that the Yucca species extract be the *Yucca schidigera* solution, Yucca 70. As previously indicated, Znaiden et al. disclose Yucca extract generally in an eye pad, but do not specifically list Yucca 70 as a suitable Yucca species extract that may be used for soothing, reducing puffiness, and lessening dark circles around the eye. Further, Znaiden et al. fail to list any specifically suitable Yucca extract. Consequently, Znaiden et al. cannot be said to set forth each and every element of claim 6. Thus, claim 6 is novel over the cited reference, and is patentable.

Claims 8-11 directly or indirectly depend from claim 6. These claims are patentable for the same reasons as the amended claim 6 from which they depend, as well as for the additional elements they require.

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2. Rejection of Claims 1, 5-6, and 8-11 Under 35 U.S.C. §102(e)

Reconsideration is requested of the rejection of claims 1, 5-6, and 8-11 under 35 U.S.C. § 102(e) as being anticipated by Tyrrell et al. (U.S. 2002/0136755).

Claim 1, as amended herein, is directed to a method of inhibiting the production of ammonia from urine held on or near the diaper area skin of a wearer. The method comprises applying a composition comprising Yucca 70 to the diaper area skin of the wearer and contacting the diaper area skin of the wearer with urine.

Claim 6, as amended herein, is discussed above.

Tyrrell et al. disclose a wipe incorporating a botanical compound on the bodyfacing materials suitable for protecting the barrier function of the skin against physical damage and irritants in biological fluids. As used in the reference, a botanical compound refers to a substance, extract or derivative of a plant. Suitable extracted botanical actives to be used in Tyrrell et al. include a Yucca species extract, and specifically, a Yucca glauca extract. The Yucca glauca extract is the only Yucca species extract disclosed.

Significantly, Tyrrell et al. fail to disclose that the Yucca species extract can be the Yucca schidigera solution, Yucca 70. This is a requirement of claim 1 and claim 6, and is a significant aspect of Applicants' invention. Although the reference does disclose a Yucca species generally; and further, discloses one specific Yucca glauca extract, there is no disclosure of Yucca 70 as required by claim 1 and claim 6 as amended herein.

As stated above, for anticipation under 35 U.S.C. §102,

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M.P.E.P. §2131 requires each and every element as set forth in the claim to be disclosed, either expressly or inherently, in a single prior art reference.

As indicated above, amended claim 1 and amended claim 6 each require that the Yucca species extract be the *Yucca schidigera* solution, Yucca 70. Consequently, Tyrrell et al. cannot be said to set forth each and every element of claim 1 and claim 6. Thus, claim 1 and claim 6 are novel over the cited reference, and are patentable.

Claim 5 depends directly from claim 1. Claims 8-11 depend directly or indirectly from claim 6. As discussed above, independent claims 1 and 6 are patentable and, as such, dependent claims 5 and 8-11 are patentable for the same reasons as for the independent claims from which they depend, as well as for the additional elements they require.

### 3. Rejection of Claim 2 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Tyrrell et al. (US 2002/0136755).

Applicants are not substantively responding to this rejection as Applicants assert that the Tyrrell et al. reference is not prior art against the pending patent application under 35 U.S.C. § 103(a). The Tyrrell et al. reference cited by the Office has a priority date of December 22, 2000 based on its 35 U.S.C. § 102(e)(1) application date.<sup>1</sup> However, as stated in 35

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<sup>1</sup>35 U.S.C. 102(e)(1) applies to an invention described in "an application for patent, published under § 122(b), by another filed in the United States before the invention by the applicant

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U.S.C. § 103(c), prior art which qualifies only under subsection (e) of section 102 does not preclude patentability where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. The Tyrrell et al. reference has been assigned to Kimberly-Clark Worldwide, Inc. Furthermore, the instant application has also been assigned to Kimberly-Clark Worldwide, Inc. As evidence of these assignments, enclosed herewith is the following: (1) The Notice of Recordation of Assignment Document and Assignment for the Tyrrell et al. reference, which sets forth that all inventors of this reference have assigned their rights to Kimberly-Clark Worldwide, Inc.; and (2) the Notice of Recordation of Assignment Document and Assignment for the instant application indicating that all inventors have assigned their rights to Kimberly-Clark. As such, Applicants assert that Tyrrell et al. cannot be a proper basis of rejection of the claims of the present application as Tyrrell et al. cannot be considered as prior art.

Because the Tyrrell et al. reference is cited improperly as prior art, this rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn. As such, claim 2 is patentable over Tyrrell et al.

4. Rejection of Claim 7 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Tyrrell et al. in view of Palumbo et al. (EP 0 922 457 A1).

For the reasons stated above, Tyrrell et al. has been

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improperly cited as prior art against the instant case under 35 U.S.C. § 103(a). Because Tyrrell et al. is cited improperly as prior art, this rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn. As such, claim 7 is patentable over Tyrrell et al. in view of Palumbo et al.

5. Rejection of Claims 3-4 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 3-4 under 35 U.S.C. § 103(a) as being unpatentable over Tyrrell et al. in view of Henderson (6,228,265).

For the reasons stated above, Tyrrell et al. has been improperly cited as prior art against the instant case under 35 U.S.C. § 103(a). Because Tyrrell et al. is cited improperly as prior art, this rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn. As such, claims 3-4 are patentable over Tyrrell et al. in view of Henderson.

6. Rejection of Claim 1 For Obviousness-Type Double Patenting

Claim 1 has been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 35 and 39 of co-pending U.S. Patent Application No. 10/028752. In response thereto, Applicants have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection. Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

In view of the above, Applicants respectfully request

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favorable reconsideration and allowance of all pending claims.  
The Commissioner is hereby authorized to charge any fee  
deficiency in connection with this Amendment A to Deposit Account  
Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully Submitted,



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